

# **EXHIBIT 4**



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APPEARANCES (CONTINUED)

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ALSO PRESENT: DOUGLAS BRUSH  
TIMOTHY SCHMIDT  
CHRISTOPHER THOMPSON  
LILLIAN DAI

1 GIVES US A LITTLE TIME FOR SOME Q&A AND QUESTIONS.

2 I HAVE INVITED BOTH MR. BRUSH AND MR. SCHMIDT TO ASK  
3 QUESTIONS AS COUNSEL ARE PRESENTING IF THERE'S A POINT THAT  
4 THEY WANT CLARIFICATION ON, AND JUST TO SIMPLY LITERALLY RAISE  
5 THEIR PHYSICAL HAND, NOT THEIR ZOOM HAND, BECAUSE I'LL SEE  
6 THAT, AND ASK FOR CLARIFICATION, OR COMMENT IF THERE'S SOME  
7 DISCUSSION POINT THAT WOULD HELP TO INFORM THE SPECIAL MASTER  
8 GOING FORWARD, AND OBVIOUSLY I WILL BE DOING THE SAME. ALL  
9 RIGHT?

10 SO WITH THAT, MS. BONN, WHO'S GOT THE LEAD FOR YOUR TEAM  
11 TO GET US STARTED?

12 MS. BONN: I DO, YOUR HONOR.

13 AND IF IT WOULD BE HELPFUL, WHAT WE HAD ANTICIPATED DOING  
14 IS THAT I WOULD GIVE AN OVERVIEW OF PLAINTIFFS' POSITION ON THE  
15 THREE QUESTIONS THAT YOUR HONOR RAISED AND TRY TO KEEP IT TO BE  
16 A PRETTY SUCCINCT OVERVIEW, AND THEN MR. MAO IS PREPARED TO  
17 DISCUSS OUR RESPONSE ON QUESTION 1 IN GREATER DETAIL.

18 THE COURT: OKAY.

19 MS. BONN: MR. FRAWLEY AND MR. MCGEE ARE PREPARED TO  
20 DISCUSS OUR RESPONSE ON QUESTION 2 IN GREATER DETAIL, AND THEN  
21 I'LL COME BACK ON QUESTION 3.

22 THE COURT: ALL RIGHT. JUST KEEP MY TIMEFRAME IN  
23 MIND, PLEASE.

24 MS. BONN: ABSOLUTELY, YOUR HONOR.

25 THE COURT: THANK YOU.

1 MS. BONN: AND I'LL START WITH QUESTION 1, WHICH IS  
2 ALSO ONE YOUR HONOR JUST REITERATED, ABOUT HOW DOES THIS RELATE  
3 TO CLASS CERTIFICATION? WHAT ARE YOU ASKING FOR AND HOW DOES  
4 IT RELATE?

5 AND WHAT I WANT TO PUT INTO CONTEXT, AND MR. MAO WILL  
6 EXPLAIN IN GREATER DETAIL, IS THAT GIVEN WHERE WE ARE, I DON'T  
7 THINK PLAINTIFFS AFFIRMATIVELY, FOR OUR CLASS CERTIFICATION  
8 MOTION, INTEND TO RELY ON SAMPLED DATA OR, FRANKLY, OTHER DATA.

9 I THINK WHERE THIS DATA ISSUE COMES INTO PLAY -- EXCUSE  
10 ME -- OTHER DATA THAT GOOGLE HAS NOT PRODUCED.

11 WE DO HAVE EXPERTS WHO RELY ON DATA THAT WAS PRODUCED  
12 DURING DISCOVERY.

13 BUT WHERE THIS COMES INTO PLAY, I THINK, IS THAT -- AND  
14 THE NINTH CIRCUIT IS CLEAR THAT UNDER BRISENO VERSUS CONAGRA,  
15 THERE IS NO ASCERTAINABILITY REQUIREMENT. AND WHAT THE NINTH  
16 CIRCUIT SAID IN CONAGRA IS THAT OFTEN IN CLASS ACTIONS, EITHER  
17 AFTER A CLASS ACTION SETTLEMENT OR POTENTIALLY AFTER AN  
18 AGGREGATED DAMAGE AWARD AND VERDICT, THERE MAY BE A CLAIMS  
19 PROCESS IN WHICH CLAIMANTS CAN COME FORWARD AND SUBMIT A CLAIMS  
20 FORM UNDER PENALTY OF PERJURY SAYING, YOU KNOW, I HAVE A CLAIM,  
21 I THINK I'M A MEMBER OF A CLASS.

22 IN THIS CASE, MARY SMITH COULD COME FORWARD AND SAY, I  
23 BROWSED INCOGNITO IN 2018.

24 AND WHAT WE NOW KNOW IS THAT GOOGLE ONCE HAD DATA, AND  
25 MR. MAO WILL EXPLAIN IN MORE DETAIL, THAT GOOGLE COULD HAVE

1 USED IN ANY SUCH CLAIMS PROCESS TO EITHER VERIFY OR CHALLENGE  
2 ANY SUCH CLAIM THAT IS SUBMITTED IN THAT CLAIMS PROCESS.

3 BUT WHAT HAS HAPPENED IS THAT THAT DATA, WHICH ONCE  
4 EXISTED, MUCH OF IT HAS ALREADY BEEN DELETED AND IS BEING  
5 DELETED ON AN ONGOING BASIS.

6 A SAMPLE OF DATA BEING PRESERVED ON A GOING FORWARD BASIS  
7 WOULD NOT ASSIST GOOGLE IN THE EFFORT THEY WISH TO MAKE IN A  
8 CLAIMS PROCESS CHALLENGING CLAIMANTS BECAUSE THE ONLY DATA THAT  
9 WOULD BE PRESERVED ON A GOING FORWARD BASIS IS FOR A SAMPLE OF  
10 10,000. SO IF A CLAIMANT CAME FORWARD AND THEY WERE NOT IN THE  
11 SAMPLE, AGAIN, GOOGLE WOULD NOT HAVE IN ITS POSSESSION ANY  
12 LONGER THE DATA IT MAY WANT TO EITHER VERIFY OR CHALLENGE THE  
13 CLAIM BEING MADE.

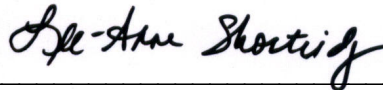
14 AND ONE OF THE OTHER CRITICAL THINGS WE'VE POINTED OUT IS  
15 THAT AS IT'S ARTICULATED, THE SAMPLING PLAN PROPOSED CALLS FOR  
16 RANDOM SAMPLES OUT OF DISPARATE LOGS, AND BECAUSE THE SAMPLING  
17 ISN'T DONE CONSISTENTLY BY I.P. ADDRESS AND USER AGENT PAIRS  
18 ACROSS LOGS, IT WOULD ALSO ELIMINATE ANY ABILITY THAT MAY HAVE  
19 EXISTED TO LINK UP DATA BETWEEN THE PSEUDONOMIZED OR B LOGS,  
20 UNAUTHENTICATED INCOGNITO LOGS, AND THE AUTHENTICATED PERSONAL  
21 LOGS WHICH WE TALKED ABOUT FAIRLY EXTENSIVELY AT LAST WEEK'S  
22 HEARING.

23 AND SO OUR POINT ON CLASS CERTIFICATION IS THAT THIS IS  
24 SOMETHING THAT GOOGLE MAY VERY WELL HAVE WANTED TO USE IN THE  
25 CLAIMS PROCESS, BUT THEY HAVE DELETED THAT DATA, AND SAMPLING

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF ZOOM PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: JUNE 4, 2022